IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 647 of 1998
With
CRIMINAL REVISION APPLICATION No. 237 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI MOHANBHAI RATHOD - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
Cr.ra. No.647/98

MR Rajesh Budhani with Mr TS NANAVATI for Applicant(s) :
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 5.

Cr.ra No.237/99

Mr SS Patel, APP for petitioner

Mr P S Champaneri for respondent no.1

Rule served for respondents no.2-5

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 16/01/2007

ORAL (COMMON) JUDGMENT

1. Both the Revision Applications are challenging the same order dated 30.9.1998 of the learned Special Judge (Atrocity Court), Ahmedabad (Rural) whereby application Exh.31 of the accused persons, joined as opponents herein, was allowed and they were discharged on the ground of lack of sanction as provided under section 197 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. There was no dispute about the fact that a complaint for the offences punishable under sections 3(1)(8)(9)(10) and sections 3(2) and 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act'), as also offences punishable under sections 323, 338, 342, 367 and 368 of IPC was made in the Court on 22.8.1994. The complainant was examined in the Court on 26.8.1994 and an enquiry under section 202 of the Code was ordered to be conducted by the Court. After the enquiry into the said complaint registered as Inquiry Case No.13/94, the learned Addl.Sessions Judge ordered issuance of summons for the offences under sections

323, 342, 367 and 368 of IPC and the aforesaid offences under the Act. After the said order dated 3.6.1995, the accused persons appear to have filed the aforesaid application Exh.31 below which the impugned order was passed after hearing the parties, mainly on the perception that the alleged offences were committed during the course of duty and hence sanction as provided under the provisions of section 197 of the Code was necessary.

3. After the matters being argued at some length, learned counsel appearing for the accused persons as well as the learned APP and learned advocate, Mr Rajesh Budhani appearing with learned advocate, Mr T.S. Nanavati conceded that in view of the allegations made in the original complaint, some of the alleged offences may, at a later stage, be found to have been committed by the accused persons while acting or purporting to act in the discharge of official duty and, it may not be possible to divide the allegations into those which require sanction for taking cognizance and those for the cognizance of which sanction may not be necessary.

4. Therefore, it was jointly suggested that the original complainant may forward an application for sanction for taking cognizance and prosecution of the accused persons, through Public Prosecutor in the trial court on or before 31.1.2007 and upon such application being submitted to the appropriate authority competent to grant sanction, such authority may decide upon the issue of granting sanction within a period of one month i.e. by the end of February, 2007. If the sanction were granted, the proceedings before the trial court would resume and the impugned order discharging the accused persons would become ineffective.

5. The above arrangement was suggested and submitted without prejudice to the rights and contentions of the parties and the contentions of the learned APP that none of the alleged offences could be attributed to discharge of official duty of any of the accused persons and sanction in such cases may not be necessary. Therefore, he clarified that the application for sanction may be considered by the

appropriate authority without prejudice to the said contention of the State Government that no sanction was required and the authority may decide the issue with a view to avoid any technical objection in future during the further proceedings of the trial.

6. Learned advocate Mr Champaneri appearing for the original accused persons stated at the Bar that the accused persons will submit themselves before the trial court for cooperating in the further proceedings if any, if the sanction were granted and summons were issued by the trial court. Rule is made absolute in the aforesaid terms with no order as to costs. Direct Service is permitted.

sd/-
[D. H. Waghela, J.]

msp